

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.542 OF 2023

Shankarlal Binduram Sharma
Age: 62 years, Occu.: Business,
R/o. 22, Sankalecha Nagar,
Bhokardan Naka Road, Jalna,
and Dist. Jalna

.. Appellant

Versus

1. The State of Maharashtra
Through Ganesh Tarachand Zalwar,
Police Sub-Inspector, Sadar Bazar
Police Station, Jalna, Dist. Jalna.

2. Zakir Yasin Rathod
Age: 50 years, Occu.: Business,
R/o. MIDC Phase-2, Jalna,
Tq. and Dist. Jalna.

.. Respondents

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Mr. Swapnil B. Joshi i/b J. P. Legal Associate, Advocate for the appellant.
Mr. S. J. Salgare, APP for respondent No.1 – State.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 13th September, 2023

ORDER :-

. Present appeal has been filed under Section 372 of the Code of Criminal Procedure by the informant – victim challenging the acquittal of respondent No.2 - original accused by learned Additional Sessions Judge, Jalna in Sessions Case No.131 of 2020 on 04.04.2023, thereby acquitting

him from the offence punishable under Sections 307, 328, 327, 342 of Indian Penal Code.

2. Heard learned Advocate Mr. Swapnil B Joshi instructed by J. P. Legal Associates for the appellant and learned APP Mr. S. J. Salgare for respondent No.1 – State.

3. It has been vehemently submitted on behalf of the appellant that the learned Trial Judge has not appreciated the evidence properly. The evidence of the appellant, who was examined as P.W.3 and evidence of P.W.1 Jagdish Jadhav, who was the driver of respondent No.2 – accused, was not considered at all. There was financial transaction between the appellant and respondent No.2 and with the help of P.W.1 Jagdish, the accused had administered powder of sleeping pills through the coffee to the appellant as a result of which respondent No.2 felt giddiness and slept. In fact, it was heavy dose of the sedative. P.W.5 Dr. Rameshwar Warkad has specifically stated that if there would have been overdose of the sleeping pills, it would have been dangerous to the life of the appellant. P.W.5 Dr. Warkad had examined the appellant on 22.01.2020 around 6.00 a.m. as he was brought in unconscious state by his relatives. Appellant had the history of bypass surgery and after the examination P.W.5 Dr. Warkad had diagnosed excess dose of substance that causes excess sleep. This clearly shows that there was intention to kill the appellant. P.W.4 Kunal Sharma is the son of

appellant and he has stated that his father had left home around 11.00 a.m.. He had tried to call his father around 12.30 p.m., but his phone was switched off. At about 2.00 p.m., he had gone to the office of accused and the watchman told him that appellant – informant had visited the office of accused. Thereafter he has given a call to PW.1 Jagdish, but he could not get the clue, as to where the informant is. He had then lodged the missing report in respect of the informant around 3.00 p.m. Police had given him call around 3.00 to 5.00 a.m. on the next day morning and told that the informant has been traced out near MIDC Shendra. Thus, everything was in a mysterious circumstance and it has been got done by the accused only as he had intention to kill the appellant. Therefore, there was material before the learned Trial Judge, still the accused has been acquitted. The matter therefore deserves reassessment and re-appreciation.

4. Here, the prosecution story is that on 22.01.2020, informant – present appellant lodged FIR stating that he was knowing the accused and he had received phone call from the accused around 10.30 a.m. on 20.01.2020 stating that they should have a coffee and should go to see two plots. He then went to the go-down/office of the accused in MIDC area in his car. When they were talking, accused told his driver i.e. PW.1 Jagdish to bring two coffees and also said that the sugar free coffee should be given to the informant. After the coffee was brought, they consumed it and they

went to see a plot near Honda Showroom in their respective vehicles. They had thereafter taken a round at the plot and decided to go to Antarwala. According to the informant, he thereafter started feeling drowsy and therefore, he left his car near the plot and went in the car belonging to accused. Informant, accused and driver of the accused P.W.1 Jagdish were in the car. On the way to Antarwala, informant went asleep. He has no idea as to what has happened thereafter, but he regained consciousness around 10.05 a.m. on 22.01.2020, when he was already in Warkad Hospital, Jalna. He learned that the accused had administered him some poisonous substance with an intention to kill.

5. It also appears to be the prosecution story that on the earlier day i.e. 20.01.2020, P.W.4 Kunal – son of the informant had lodged missing report in respect of his father. Around 1.30 a.m. on 22.01.2020, a person had informed PSI Zalwar that he had seen the informant and the accused going towards Beed. The cell phone of the accused was switched off, but when accused was contacted, he told that he is at Pandharpur. Inquiry was made in respect of informant, but he replied that the informant was not with him. Police told accused to come back to Jalna and thereupon inquiry was made with the driver of the accused, who then told that accused had left the informant at Aurangabad. PSI Zalwar, driver of accused and the police staff went to Aurangabad and found that the informant was sleeping in the car.

They had tried to wake him up, but informant was not in his senses and, therefore, the police admitted him to Warkad Hospital, Jalna and thereafter, when he regained consciousness, the FIR was lodged.

6. From the record, which was before the learned Trial Judge, especially the depositions, we could find that there was absolutely no consistency in the prosecution story. PW.6 PSI Zalwar's action or involvement creates doubt. If the informant was found by him at Aurangabad in a vehicle and he was sleeping at that time, his efforts to wake him up did not yield positive result, but he states that the informant was not in his senses. Then instead of immediately taking him to the hospital in Aurangabad, why he was taken to hospital at Jalna, is a question. The distance between Karmad MIDC to Jalna is around 40 kilometers. It appears that except the driver i.e. PW.1 Jagdish there was no other witness, who had seen the accused and the informant travelling together from Jalna to Pandharpur (District Solapur) to Ahmednagar and back to Aurangabad. PW.6 PSI Zalwar has not collected the CCTV footages from the toll booths.

7. Testimony of PW.3 the informant would show that upon the invitation of the accused, he had gone to his office, had a coffee and thereafter they went to see the plots. Interestingly, immediately after the consumption of the coffee, the informant has not seen any signs, rather he proceeded in his car and went to a plot near Honda Showroom on

Aurangabad road. They inspected the said plot and thereafter the accused told him that they would go to see the plot at Antarwala in his vehicle and he should keep his car there only i.e. near the Honda showroom on Aurangabad road. He then says that he remember that he had received two calls until they had reached Ambad road, but he has deposed that he do not remember what happened thereafter. Then the question arises as to why he would have been taken to Pandharpur, Ahmednagar and then back to Aurangabad. Another fact to be noted is that if he had gone to Jalna in the vehicle belonging to accused by keeping his own vehicle near Honda Showroom, Aurangabad road, then in whose car he was found by P.W.6 PSI Zalwar. P.W.6 PSI Zalwar has not stated as to in which vehicle accused had come to police station. Certainly, informant was not with the accused at that time. Why P.W.6 PSI Zalwar had not taken the accused along with him when P.W.1 Jagdish had disclosed that accused has left the informant in a car in Aurangabad. Interestingly, P.W.3 informant says that he was carrying cash of Rs.4,00,000/- and two cell phones, but they were found missing. This has come by way of supplementary statement that was recorded on 26.01.2020. The said time gap speaks for itself. In his cross-examination, many admissions have been given. The informant says that he was knowing accused since 10-12 years and prior to that he was knowing his father since 30-35 years. They had family relations. They both are indulged in construction business. They were on visiting terms with each others office.

He had travelled along with the accused and his father on several occasions. If this is the situation in respect of relationships, then why the accused would have thought of eliminating the informant, is a question. There are material improvements made by informant in his substantial evidence, than his FIR Exhibit-40. It appears that it is the business rivalry that has prompted the informant to lodge the report.

8. The star witness appears to be P.W.1 Jagdish, who was in the employment of the accused at the time of incident. If we consider his testimony, then according to him accused had given him a powder and told that it is sugar free and he should put it in the coffee of the informant. He says that after informant arrived, he prepared the coffee and put the said powder in the coffee of informant. If we consider his testimony along with the testimony of P.W.3 informant, informant says that two cups of coffee were brought by the driver of accused, whereas P.W.1 says that he prepared only one cup of coffee. How much powder he had put in the coffee has been conveniently not asked to him. When it comes to the overdose of pills, then the quantity of the powder would be a relevant fact. The testimony of P.W.1 Jagdish would show a different story. He says that they inspected the plot near Honda Showroom, Jalna where itself informant felt giddiness. As they wanted to go to Antarwala, accused told informant that his vehicle should be kept there itself. Here, he does not say that the

informant told accused that since he is feeling giddiness, he would go back to house or arrangements be made to send him to house and, therefore, the further alleged actions on the part of informant create doubt. P.W.1 Jagdish further says that he had thereafter taken the car of the informant to Pandharpur as per the directions given by the accused. Therefore, he went to that place where the car of the informant parked and then brought it to Pandharpur. He then met accused at Golapangri at Ambad road. He then told that informant has to be left at MIDC office. He thereafter says that they went by Shahagad, Beed and Pandharpur and in between the informant used to wake up and again go to sleep. From Padharpur they went by Karmala, Ahmednagar, Aurangabad to Chikalthana. After going ahead of Chikalthana, they parked the vehicle by the side of the road. They both that means he himself and the accused lifted informant from the vehicle of the accused and put him in the car of the informant. If this is the scenario, the question then arises why P.W.6 PSI Zalwar had not made P.W.1 Jagdish as an accused. When he was knowing the facts of the case, yet he did not inform the police immediately. Rather his involvement is glaring. Though he has denied that there was dispute on account of salary between accused and himself, he has given a false story. He says that they had travelled around 700 kms., but for what purpose is not coming forward.

9. As regards the medical evidence is concerned, though P.W.6 PSI Zalwar says that he had instructed P.W.5 Dr. Warkad that he should preserve

the stomach wash, PW.5 Dr. Warkad has not preserved it. There is no concrete medical evidence on record. The opinion of the medical practitioner was corroborative in nature, but here the substantial evidence is doubtful. There was no basis for him to arrive at the conclusion that there was overdose of sleeping pills.

10. With the said evidence, which is thoroughly scanned here for the purpose that the accused has been acquitted and he should not be unnecessarily asked to face the appeal and, therefore, as the informant has failed to point out perversity in the impugned judgment, we do not find any substance in the appeal. It deserves to be dismissed at the threshold. Accordingly, it is dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm